IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 848 of 2000
in
SPECIAL CIVIL APPLICATION No 1282 of 2000
with
CIVIL APPLICATION No 11304 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN DAHYABHAI RAVA

Versus

EXECUTIVE ENGINEER

Appearance:

1. LETTERS PATENT APPEAL No. 848 of 2000

MR IS SUPEHIA for Appellant No.

MR AMIT M PANCHAL for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 19/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

#. The appellant-petitioner is a widow of one Mr. Dahyabhai J. Raval, who was working as General Mistry under respondent No.1-Executive Engineer, Panchayat Roads and Buildings Division, Mehsana. He retired from service on reaching age of superannuation on 30.4.1993 as per the order dated 13.4.1993 passed by the respondent No.1. He expired on 27.1.2000.

#. The State of Gujarat framed scheme of higher grade scale vide resolution dated 5.7.1991. As per the said resolution an employee, who was entitled to three higher grade scales after putting service of 9-18-27 years counting from the date of appointment. As per the said resolution dated 5.7.1991, Dahyabhai was granted higher grade from 16.10.1987 on the footing that he was on that post since 16.10.1978.

#. The aforesaid resolution dated 5.7.1991 issued by the State of Gujarat came to be substantially modified by the subsequent resolution dated 16.8.1994. As per the resolution the first higher grade would be admissible from 1.6.1987 if an employee completed 9 years or more on that date. It further provides that in cases of employees, who retired prior to 1.8.1994 will be governed by the earlier resolutions. Meaning thereby, that such employee would be entitled for three higher grade pay scales and their pension would be fixed on that basis.

#. Mr. Dahyabhai by his letter dated 27.11.1992 requested the Deputy Executive Engineer, who rejected his request in view of sub-section 3(2) of resolution dated 16.8.1994.

#. It is the case of the present petitioners that for the purpose of higher grade scale, services of her deceased husband was counted only from 16.10.1978 and not prior to that which should have been done in accordance with resolutions dated 5.7.1991 and 16.8.1994 and as per the said resolutions, her husband should have been paid three higher grade scales and also pension, gratuity etc.

#. As per the case of the petitioner her deceased

husband was employed as work charge sub-Mistry on 9.10.1961 and, thereafter as sub Mistry on 31.3.1967 and then promoted as General Mistry on 16.7.1998.

#. It is the case of the petitioner that her husband was contemplated to file petition before this court after rejection of his request to grant second higher grade scale by the respondent No.1 as per his letter dated 30.7.1996 in view of the judgment of this court delivered on 25.8.1999 in Special Civil Application No.10204 of 1999. Unfortunately, he died on 27.1.2000, therefore, she had approached this court by way of this Special Civil Application No.1282 of 2000.

#. Learned counsel Mr. Supehia for the appellant-petitioner submitted that the learned Single Judge was wholly in error in dismissing the writ petition of the appellant-petitioner on the ground of locus standi and also on the ground of delay.

#. Having carefully gone through the order dated 26.6.2000 passed by the learned Single Judge dismissing Special Civil Application No.1282 of 2000, it is clear that the learned Single Judge has dismissed writ petition on the ground of locus standi of the appellant-petitioner. The learned Single Judge has also observed that Late Mr. Dahyabhai had received the benefit of first grade in the year 1992 while he was in service. His claim for second higher grade scale made to the concerned authority was rejected as far back as on 30.7.1996. After his retirement in 1993 he did not raised any dispute regarding second higher grade scale while he was in service and even after his retirement. Therefore, Late Mr. Dahyabhai had abandoned his cause.

##. No doubt, it is true that after his claim of second higher scale was rejected on 30.7.1998 by the authorities, Mr. Dahyabhai has not taken any steps in the matter, but he was contemplating to file writ petition before this court in 2000 in view of the judgment of this court delivered in 1999 but, unfortunately he died.

##. Under the circumstances, we are of the considered opinion that when there is a judgment of this court delivered on 25.8.1999 in Special Civil Application No.10204 of 1999, then the authority is bound to consider the case of the appellant-petitioner, if proper representation is made to the State Government within one month from today. Mr.Sood, learned AGP, appearing for respondents assures that if such representation is made

within one month from today, then the State Government or any other competent authority will consider and decide the same in accordance with law as early as possible preferably within three months from the receipt thereof.

##. In view of the above discussion, learned counsel Mr.Supehia for the appellant seeks permission to withdraw not only the Letters Patent Appeal, but also Special Civil application to which learned AGP, Mr.Sood has no objection. Permission is granted to withdraw the Letters patent Appeal as well as Special Civil Application and accordingly they are dismissed.

Civil Application for stay is disposed of as the main Appeal itself is disposed of.

(B.J.Shethna, J.)

(Ravi R. Tripathi, J.)

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